

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Review of Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunications Act of)	
1996)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	

SECOND REPLY COMMENTS OF THE FIBER-TO-THE-HOME COUNCIL

I. INTRODUCTION

The Fiber-to-the-Home (FTTH) Council is an association of companies working to accelerate the deployment of advanced broadband networks throughout America. The FTTH Council currently has 66 member companies representing the entire FTTH value chain, including competitive local exchange companies (CLECs), home developers, municipalities, Regional Bell Operating Companies (RBOCs), optical equipment manufacturers, content providers, construction and engineering companies, and electronics manufacturers. The FTTH Council's member companies are listed in Appendix A.

The FTTH Council hereby submits the following second reply comments in response to the *Notice for Proposed Rulemaking* released in the above proceeding concerning the Federal Communications Commission's (FCC's) triennial UNE review.¹ In its original comments, the FTTH

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Service Offering Advanced Telecommunications Capability*, Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, 98-147, FCC 01-361 (rel. Dec. 20, 2001) ("*NPRM*").

Council recommended that the Commission should find to exempt FTTH deployments from the Section 251 unbundling, resale, and wholesale pricing rules. The FTTH Council asserted that this action would hasten the deployment of the FTTH networks necessary to satisfy consumer's demand for broadband as well as enabling never-before delivered advanced applications and services for the benefit of the American consumer. In its first reply comments, the Council drew attention to comments filed by Corning Incorporated², which included a very detailed and compelling study on the effects of regulation on FTTH deployments by Cambridge Strategic Management Group (CSMG)³. CSMG's work demonstrated using real market-based analysis that FTTH could potentially be deployed six times more extensively under a deregulated FTTH environment.

As part of the first round of comments submitted to the FCC, a group of commentators made the argument to the FCC to keep the unbundling rules as broad and far-reaching as possible. As a result, several filings have flippantly included FTTH networks in the broad classification of other network elements. The FTTH Council adamantly disagrees with this approach.

II. No Carrier Group Has An Inherent Advantage In FTTH Deployment, In Fact, Each Carrier Group Has Its Own Unique Advantages and Disadvantages

A few commentators have argued that RBOCs have an inherent advantage in deploying FTTH networks. However, as is clearly articulated in past comments filed by the FTTH Council, this is not the case. In fact, current publicly available data suggests just the opposite. To date, RBOC FTTH builds only account for 3% of the total FTTH connections nationwide.⁴ Therefore, with better than 90% control of the FTTH market, CLECs and municipalities are clearly the market leaders in the deployment of FTTH networks.

² Comments of Corning, Inc., *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provision of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Services Capability*, CC Docket No. 01-338 ("Corning")

³ Cambridge Strategic Management Group, *Assessing the Impact of Regulation on Deployment of Fiber to the Home: A Comparative Business Case Analysis*, attached as Attachment A to Corning ("Analysis")

1. FTTH Requires An Entirely New and Separate Network.

There are two basic scenarios in which FTTH networks have been and will continue to be deployed. The first is what the industry commonly refers to as a 'greenfield' build. A greenfield build is a network construction process where a carrier lays communications cables for the first time in an area; meaning, there is no legacy networks present. In a greenfield situation, all carriers have equal advantages and disadvantages. Each carrier would equally have the ability to reduce initial construction costs by laying their fiber optic cable and equipment in the trenches while they are open during the home construction process. Assuming voice, video, and data services are necessary to prove out the economics of a FTTH build, each carrier would have to build or find access to their own head-end facilities in order to provide video services.⁵ Each carrier would also have to connect their FTTH network to an RBOC's central office (CO), unless entirely bypassing the RBOC and inter-exchange carriers networks. A good example of a greenfield FTTH build is the new home development of Daniel Island in South Carolina. The CLEC Daniel Island Media Company built and operates this development's FTTH network. The Daniel Island Media Company funded the construction of its own network, built its own head-end facility for video and data, provided its own transport to the RBOC's CO, and negotiated a connection agreement with the RBOC to access the public switched telephony network at the CO.

The second classification is commonly referred to as an 'overlay' or 'overbuild' approach. This construction process involves building a new FTTH network over the same coverage area of an existing legacy network or networks. Carriers are motivated to overlay with FTTH for a variety of reasons but normally do so for revenue and maintenance driven reasons or as the result of a complete lack of accessible broadband. In an overlay FTTH construction process, the legacy network is left in place and a new and separate FTTH network is constructed. Over time, customers are acquired or converted over to the new FTTH network from the old legacy telephony or cable network. These legacy networks must be maintained during this transition process in order to maintain critical services, which industry experts say

⁴ Comments of the Fiber-To-The-Home Council, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provision of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Services Capability*, CC Docket No. 01-338 ("FTTH Council")

⁵ CSMG Analysis at 19.

could last from 10 to 15 years.⁶ The analysis conducted by CSMG and referenced earlier in this document illustrates that in a deregulated FTTH environment, an RBOC would still have an economic incentive to deploy FTTH networks even while maintaining a separate legacy network, which CLECs would continue to have access to under the FTTH Council's proposal.⁷ An excellent example of an overlay or overbuild FTTH network is the network that was built by the Grant County Public Utility District (GCPUD) in Ephrata, Washington. GCPUD overbuilt an RBOC's and an incumbent cable television operator's networks to bring broadband to a community that did not have the capability before.

2. Deployment Challenges Are The Same For All Carrier Groups.

Challenges to FTTH deployment are not unique to any specific carrier segment; in fact, they are common to all carriers entering the FTTH space.

Some commentators have made the argument that RBOCs have large customer bases in order to draw from in order to transition subscribers over to a FTTH network. However, as mentioned earlier in the CSMG analysis, a carrier typically needs to provide voice, video and data services to its subscribers in order to make the investment in FTTH economically justifiable. Since RBOCs are not the market leaders in the delivery of broadband and video services, they would be equally challenged as any other segment to convert subscribers over to their network for services that were not previously offered.

Another group of commentators have argued that RBOCs would have an advantage in rights-of-way with regards to FTTH construction. This is also inaccurate, as the Communications Act requires each RBOC to offer non-discriminatory access to its "poles, ducts, conduits, and rights-of-way" to all telecommunications competitors.⁸

III. Conclusion

⁶ FTTH Council member discussion after Verizon's *Fiber to the Premises* presentation during the FTTH Council's Open Meeting held on May 22, 2002 in Reston, VA

⁷ CSMG Analysis at ?.

⁸ 47 USC Section 25(b)(4)

It is the FTTH Council's position that in order to provide the American consumer with the best broadband connection possible, the Commission should encourage the deployment of advanced telecommunications capability by determining that Section 251 unbundling, resale, and wholesale pricing regulation should not apply to FTTH networks. Thus, by declaring FTTH networks as free from UNE regulation, the FCC will fulfill its Section 706 obligation to enable and encourage the deployment of advanced telecommunications capability while preserving the pro-competitive spirit of the Telecommunications Act.

Respectfully submitted on behalf of our members,
THE FTTH COUNCIL

James Salter
President
FTTH Council
PO Box 195
Corning, NY 14830
www.ftthcouncil.org
info@ftthcouncil.org

ATTACHMENT A

Listing of the FTTH Council member companies:

3M	Luminent Inc
Adesta Communications	Marconi
AFL Telecommunications	MCSi
Alcatel	Motorola BCS
Alloptic	NEC Eluminant Technologies
Alpha Technologies	Neptec Optical Solutions
Americable	Nexans
American Power Conversion	OFS Fitel
ARRIS	Oki Network Technologies
Asset Analytics	Optical Solutions
Atlantic Engineering Group	Paceon
Bechtel Telecommunications	Packetfront Sweden AB
Bristol Virginia Utilities	Philips Digital Networks/Crypto Tec Division
BroadbandConnect, Inc.	Pirelli
Broadcom Corp	PowerCom Inc.
Charles Machine Works	PurOptix
Chelan County Public Utility District No. 1	Samsung Electronics Co., Ltd.
Cisco Systems	SandStream Communications & Entertainment
CommScope	SBC Communications
CopperCom	Science Applications International Corp
Corecess	Scientific Atlanta
Corning Incorporated	Sumitomo Electric Lightwave
Dalton Utilities	TDK Corporation
DynamicCity Metronet Advisors	Team Fishel
Eagle Broadband	Telework Consortium
Essex Corp.	Tetra Tech Communications
FiberCore	Tropic Networks
Fiber.TV	TVC Communications
FONS Corp	Tyco Electronics
FTTX Systems	Verizon
Harris	Volex Inc.
Gould Fiber Optics	Wave7Optics
IMC Networks	Worldwide Packets
Irdeco Access	Zero dB
IWired	